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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,715	07/22/2003	Joseph Skiba	0133-1	8129

25901 7590 04/09/2004

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EXAMINER

LINDSEY, RODNEY M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,715

Applicant(s)

SKIBA, JOSEPH

Examiner

Rodney M. Lindsey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/11/3</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-9, drawn to a helmet system, classified in class 2, subclass 411.
 - II. Claim 10, drawn to a process for producing a helmet shell, classified in class 156, subclass 212.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I and Group II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as forming the bonded net or mesh into an inner shell portion, forming the shell with an inner surface against the inner shell portion and then forming the bonded net or mesh into an outer shell portion against the outer surface of the shell.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Ernest D. Buff on April 5, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claim 10 is

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withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the attachment means of claims 1 and 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 contains the trademark/trade name KEVLAR and SPECTRA. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe fibers and, accordingly, the identification/description is indefinite.

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Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schiebl et al. Note the helmet system per Figure 1 with the polymeric foam core or shell 16 and the mesh or net 12, 14 of KEVLAR fiber. The characterization of the KEVLAR as being of long length fibers would have been obvious to one of ordinary skill in the art at the time of the invention since such characterization would have been relative as any particular length fiber can be considered either short or long. Product-by-process claim 9 even though reciting features in terms of how they are made, e.g. injection molding and molding, is still a product claim, and it is the patentability of the product, not the process steps, which must be determined. Schiebl et al. teach the shell at 16 regardless of how it is formed and teach the mesh or net of the helmet system regardless of how formed with the shell.

9. Claims 1, 2 and 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiebl et al. in view of Halstead et al. Schiebl et al. show a shell "core 16" reinforced on inner and outer surfaces by a mesh or net 12, 14 of KEVLAR fibers and attachment means 56, 72. With respect to claim 1 Schiebl et al. do not teach either long length fibers for the mesh or net, or a pliable padded inner helmet as claimed. The characterization of the KEVLAR as being of long length fibers would have been obvious to one of ordinary skill in the art at the time of the

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invention since such characterization would have been relative as any particular length fiber can be considered either short or long. Halstead et al. teach old at 20 a pliable padded inner helmet as claimed. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the helmet system of Schiebl et al. with the padding at 20 of Halstead et al. to achieve the advantage of damping the force of an impact to the wearer of the helmet. With respect to claim 2 note column 4, line 15 of Schiebl et al. and the use of a polymeric material. With respect to claim 4 note the use of KEVLAR by Schiebl et al. for the mesh or net 12. With respect to claim 5 as the mesh or net 12 covers the majority of the wearer's head inherently it would be of a length greater than 1 inch. With respect to claim 6 note such teaching at 20 of Halstead et al. (see column 4, lines 8-24). With respect to claim 7 note such teaching at 20 of Halstead et al. (see column 4, line 22). With respect to claim 8 note the strap at 72 of Schiebl et al.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schiebl et al. in view of Halstead et al. as applied to claim 1 above, and further in view of World patent to Ross. Schiebl et al. do not teach the helmet shell having a thickness as claimed. Ross teaches old to form a composite laminate shell 30-34 of a total thickness of about $\frac{1}{4}$ inch. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the shell of Schiebl et al. of about $\frac{1}{4}$ inch in the manner of Ross to achieve the advantage of maintaining a lightweight helmet shell.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the reinforced helmet shells of Nakade et al., Daly, Shirasaki et al.,

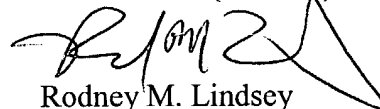
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Frieder et al., Japanese patent to Suzuki et al., Japanese patent to Nomura, Arai and Li et al., and the use of padding in Lastnik et al., Saijo et al. and Japanese patent to Nishimura et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (703) 305-7818. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney M. Lindsey
Primary Examiner
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rml